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MACKIE &amp; REILLY

015/018

UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

MARTY WOOLFSON, et. al.

Plaintiffs

vs.

DONALD L. CARCIERI, Governor  
of Rhode Island, et. al.,

Defendants

CA No. 03-463S

**PLAINTIFFS' AMENDED RESPONSE CONSENTING TO  
MOTION FOR STAY**

Plaintiffs initially opposed the defendants' motion for a stay of the proceedings, but intervening events have caused plaintiffs to change their position. In the interests of judicial efficiency and conservation of the parties' resources, plaintiffs now agree with defendants that a stay of proceedings in this case is warranted, for reasons explained in the accompanying memorandum.

Respectfully submitted:



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#### CERTIFICATE OF SERVICE

I affirm under penalties of perjury that this Response and the accompanying memorandum were served on the attorneys of record by first class mail to the following addresses on the 1st day of March, 2004:

Rebecca T. Partington  
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UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

MARTY WOOLFSON, et. al.	)	
	)	
Plaintiffs	)	
	)	CA No. 03-463S
vs.	)	
	)	
DONALD L. CARCIERI, Governor	)	
of Rhode Island, et. al.,	)	
	)	
Defendants	)	

**PLAINTIFFS' MEMORANDUM CONSENTING TO  
MOTION STAY**

Defendants have asked this court to stay proceedings because a bill has been introduced in the Rhode Island legislature that relates to the direct shipment of wine. If the bill is passed substantially in its present form, it might eliminate much of the discrimination between in-state and out-of-state wineries that forms the basis of the Complaint, thereby rendering part of this case moot.

Intervening defendants have informed plaintiffs that they intend to file an additional motion for a stay of these proceedings because a petition for certiorari is pending before the U.S. Supreme Court that asks the Court to review conflicting rulings from the Sixth and Second Circuits on the constitutionality of direct shipment laws similar to Rhode Island's. The Sixth Circuit in *Heald v. Engler*, 342 F.3d 517 (6th Cir. 2003), ruled that Michigan's direct shipment law was unconstitutional. The Second Circuit in *Swedenburg v. Kelly*, \_\_\_ F.3d \_\_\_, 2004 U.S. App. Lexis 2337 (2nd Cir. 2004), ruled to the contrary that New York's direct shipment law was constitutional. The state of Michigan has petitioned for certiorari *sub nom* *Granholt v. Heald*, docket nos. 03-1116 and 03-1120.

Granting or refusing a stay of proceedings is a matter for the district court's discretion. *See In re Marine Asbestos Cases*, 265 F.3d 861, 869 (9th Cir. 2001); *Ben Ezra, Weinstein & Co. v. America Online Inc.*, 206 F.3d 980, 987 (10th Cir. 2000). It is part of the court's inherent power to manage civil proceedings before it. *See Degen v. United States*, 517 U.S. 820, 827 (1996).

In the interests of judicial efficiency and the conservation of the resources of our clients, plaintiffs agree that the most sensible course is to stay proceedings in this case until either the Rhode Island legislature or the U.S. Supreme Court acts.

Respectfully submitted:



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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLANDMarty Woolfson, et al  
Plaintiffs

v.

CA03-463S


Donald L. Carcieri, Governor  
of Rhode Island, et al  
DefendantsO R D E R

The Memorandum and Order dated March 1, 2004, denying defendants' Motion for Stay is hereby VACATED based on the filing of plaintiffs' amended response consenting to Motion for Stay. After consideration of the points made in defendants' supplemental filing, the defendants' Motion for Stay is hereby GRANTED.

BY ORDER:

  
DEPUTY CLERK

ENTER:

  
WILLIAM E. SMITH  
DISTRICT JUDGEDATE: 3/9/04

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